

1-1 By: Harris S.B. No. 1768
1-2 (In the Senate - Filed March 11, 2005; March 30, 2005, read
1-3 first time and referred to Committee on Jurisprudence; May 2, 2005,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 4, Nays 0; May 2, 2005, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1768 By: Gallegos

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the attachment of a judgment lien to homestead
1-10 property.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 52.001, Property Code, is amended to
1-13 read as follows:

1-14 Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by
1-15 Sections [Section] 52.0011 or 52.0012, a first or subsequent
1-16 abstract of judgment, when it is recorded and indexed in accordance
1-17 with this chapter, if the judgment is not then dormant, constitutes
1-18 a lien on and attaches to any [the] real property of the defendant,
1-19 other than real property exempt from seizure or forced sale under
1-20 Chapter 41, the Texas Constitution, or any other law, that is
1-21 located in the county in which the abstract is recorded and indexed,
1-22 including real property acquired after such recording and indexing.

1-23 SECTION 2. Subchapter A, Chapter 52, Property Code, is
1-24 amended by adding Section 52.0012 to read as follows:

1-25 Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD
1-26 PROPERTY. (a) In this section:

1-27 (1) "Homestead" has the meaning assigned by Section
1-28 41.002.

1-29 (2) "Judgment debtor" and "judgment creditor" have the
1-30 meanings assigned by Section 31.008(h), Civil Practice and Remedies
1-31 Code.

1-32 (b) A judgment debtor may, at any time, file an affidavit in
1-33 the real property records of the county in which the judgment
1-34 debtor's homestead is located that substantially complies with
1-35 Subsection (f).

1-36 (c) Subject to Subsection (d) and except as provided by
1-37 Subsection (e), an affidavit filed under Subsection (b) serves as a
1-38 release of record of a judgment lien established under this
1-39 chapter.

1-40 (d) A bona fide purchaser or a mortgagee for value or a
1-41 successor or assign of a bona fide purchaser or mortgagee for value
1-42 may rely conclusively on an affidavit filed under Subsection (b) if
1-43 included with the affidavit is evidence that:

1-44 (1) the judgment debtor sent a letter and a copy of the
1-45 affidavit, without attachments and before execution of the
1-46 affidavit, notifying the judgment creditor of the affidavit and the
1-47 judgment debtor's intent to file the affidavit; and

1-48 (2) the letter and the affidavit were sent by
1-49 registered or certified mail, return receipt requested, 16 or more
1-50 days before the affidavit was filed to:

1-51 (A) the judgment creditor's last known address;

1-52 (B) the address appearing in the judgment
1-53 creditor's pleadings in the action in which the judgment was
1-54 rendered or another court record, if that address is different from
1-55 the judgment creditor's last known address;

1-56 (C) the address of the judgment creditor's last
1-57 known attorney as shown in those pleadings or another court record;
1-58 and

1-59 (D) the address of the judgment creditor's last
1-60 known attorney as shown in the records of the State Bar of Texas, if
1-61 that address is different from the address of the attorney as shown
1-62 in those pleadings or another court record.

1-63 (e) An affidavit filed under Subsection (b) does not serve

as release of record of a judgment lien established under this chapter with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor after the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:

(1) the affidavit filed by the judgment debtor under Subsection (b) is untrue; or

(2) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

(f) An affidavit filed under Subsection (b) must be in substantially the following form:

HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:

(1) My/our name is/are _____ (insert name of Affiant(s)). I/we own the following described land ("Land"):

(describe the property claimed as homestead)

(2) This affidavit is made for the purpose of effecting a release of that judgment lien recorded in _____ (refer to recording information of judgment lien) ("Judgment Lien") as to the Land.

(3) The Land includes as its purpose use for a home for Affiant(s) and is the homestead of Affiant(s), as homestead is defined in Section 41.002, Property Code. The Land does not exceed:

(A) 10 acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business; or

(B) 200 acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.

(4) Attached to this affidavit is evidence that:

(A) Affiant(s) sent a letter and a copy of this affidavit, without attachments and before execution of the affidavit, notifying the judgment creditor in the Judgment Lien of this affidavit and the Affiant(s)' intent to file for record this affidavit; and

(B) the letter and this affidavit were sent by registered or certified mail, return receipt requested, 16 or more days before this affidavit was filed to:

(i) the judgment creditor's last known address;

(ii) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(iii) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(iv) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(5) This affidavit serves as a release of the Judgment Lien as to the Land in accordance with Section 52.0012, Property Code.

Signed on this _____ day of _____, _____.

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20____.

My commission expires: _____

Notary Public, State of Texas

Notary's printed name:

3-1
3-2
3-3
3-4
3-5
3-6
3-7
3-8
3-9

SECTION 3. The change in law made by this Act applies only to an abstract of judgment lien recorded and indexed on or after the effective date of this Act. An abstract of judgment lien that is recorded and indexed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2005.

* * * * *

3-10